

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TRACY L. MOORE,)	
)	
Plaintiff,)	Civil Action No. 08-1637
)	
v.)	Magistrate Judge Bissoon ¹
)	
CZARNOWSKI DISPLAY SERVICE,)	
INC.,)	
)	
Defendant.)	

ORDER

Defendant filed a Motion to Dismiss on December 23, 2008. *See* Doc. 5. Plaintiff has timely filed an opposition brief (Doc. 14) responding to Defendant's Motion and requesting "permission" to amend her pleadings. *See id.* at 2 n.1; *id.* at 3 n.2; *and id.* at 11 n.7; *see also* Pl.'s proposed am. compl. (attached as Ex. to Pl.'s Opp'n Br.).

In this instance, Plaintiff does not need permission to file an amended complaint. "[When] a defendant asserts the defense of failure to state a claim by motion, the plaintiff may amend the complaint once 'as a matter of course' without leave of court." Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000) (citations omitted, quotations in original). Given Plaintiff's obvious desire to amend, **she hereby is ORDERED to file her amended complaint by January 26, 2009.**

¹ By consent of the parties, the undersigned sits as the District Judge in this case. *See* Consent forms (Docs. 10 & 11).

Once Plaintiff files her amended complaint, the Court will enter an order: denying as moot Defendant's current Motion to Dismiss²; denying as moot Defendant's Motion for Leave to File a Reply Brief (*see* Doc. 15); directing Defendant to respond to the amended complaint; and rescheduling the Case Management Conference now set for February 18, 2009.

IT IS SO ORDERED.

January 22, 2009

s/Cathy Bissoon
Cathy Bissoon
United States Magistrate Judge

cc (via email):

David B. Spear, Esq.
Jessica Fayerman, Esq.
Kimberly J. Kisner, Esq.
Marc J. Siegel, Esq.

² *See generally* Demeter v. Buskirk, 2003 WL 22416045, *5 (E.D. Pa. Oct. 20, 2003) (proper filing of amended complaint renders moot previously filed motions to dismiss).